

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DIABETES CENTERS OF AMERICA, §
INC., §

Plaintiff, §

v. §

CIVIL ACTION NO. H-06-3457

HEALTHPIA AMERICA, INC., §

Defendant. §

ORDER


This case is before the Court for consideration of whether documents listed on Defendants' privilege log must be disclosed to Plaintiff. The dispute has been briefed in letters to the Court [Docs. # 73, # 74, and # 87], and the Court has reviewed the documents *in camera*.

The documents fall generally into two categories – those created prior to November 1, 2006, and those created after that date. The parties have now stipulated that they had a common interest prior to November 1, 2006. Based on that stipulation, Defendants produced to Plaintiff all pre-November 1, 2006, documents listed on the privilege log.

The post-November 1, 2006 documents were produced to Plaintiff with attorney-client communications redacted. Plaintiff argued that Defendants' attorney-client

privilege had been waived by disclosure of other attorney-client communications prior to November 1, 2006. Because the parties have stipulated that there was a common interest between the parties prior to November 1, 2006, production of attorney-client documents prior to that date does not waive Defendants' attorney-client privilege for documents produced after that date under New Jersey law. *See In re State Comm'n of Investigation Subpoena Number 5441*, 544 A.2d 893, 895-96 (N.J. Super. A.D. 1988).¹ Because there has been no waiver for the post-November 1, 2006 documents, the Court concludes that the attorney-client portions of the redacted documents need not be produced to Plaintiff.

SIGNED at Houston, Texas, this **14th** day of **December, 2007**.



Nancy F. Atlas
United States District Judge

¹ New Jersey law applies to the attorney-client privilege issue because the request for legal advice originated in New Jersey for a client located in New Jersey. *See* FED. R. EVID. 501.